Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In the

SUPREME COURT OF THE UNITED STATES

October Term 1975

No. 75-257

LESLIE H. BAKER, JR., Appellant Pro Se

v.

UNITED STATES OF AMERICA, Appellee

APPEAL

from the Opinion of the United States Court of Appeals for the Fifth Circuit

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Leslie H. Baker, Jr.
1417 Lincoln Avenue
Fort Worth, Texas 76106

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JURISDICTIONAL STATEMENT

Leslie H. Baker, Jr., Appellant Pro Se, prays that the United States Supreme Court grant oral argument and briefing on the appeal of this cause.

Although final judgment on merits was entered only on the second complaint, review of all of the case history is important to an understanding that the defendant first admitted ... then later denied the same facts.

OPINIONS BELOW

An order of dismissal of the initial complaint, LESLIE H. BAKER, JR. v. DISTRICT DIRECTOR OF INTERNAL REVENUE, et al (reported 348 F. Supp. 524) was entered by the United States

District Court for the Northern District of Texas on March 20, 1972.

The opinion of affirmance was entered by the United States Court of Appeals for the Fifth Circuit on October 10, 1972 (reported 468 F2d 199).

Summary judgment on the second complaint : LESLIE H. BAKER, JR. v. UNITED STATES OF AMERICA , was entered on December 10, 1974 by the United States District Court for the Northern District of Texas (Appendix A-1).

The United States Court of Appeals for the Fifth Circuit affirmed that judgment in its opinion filed June 13, 1975 (Appendix A-2).

JURISDICTION

The cause seeks the refund of federal income taxes. The case was brought pursuant to Title 28, Section 1346 of the United States Code.

After judgment by the district court, appeal was timely taken to the United States Court of Appeals for the Fifth Circuit, which entered its opinion of affirmance.

Notice of appeal to the United States Supreme Court was filed with the appellate court on June 24, 1975 with appropriate service (Appendix A-3).

The jurisdiction of the Supreme Court is invoked under Article III, Sections 2-1 and 2-2, of the United States Constitution because the appellant has been deprived of substantial rights pursuant to the due process clause of the 5th Amendment, has been denied judgment on admitted facts grounded in equity, and has been taxed in violation of the 16th Amendment.

CASES SUSTAINING JURISDICTION

The appellant finds no Supreme Court precedent establishing the treatment of capital expenditures by a taxpayer disposing of capital assets.

The Supreme Court has disposed of the treatment of expenses in connection with transactions of taxpayers in the business of buying and selling securities in HELVERING v. WINMILL, 305 US 79 and SPRECKELS v. COMMISSIONER, 315 US 626.

The relationship to an ultimate income tax would appear sufficient to invoke the jurisdiction of this Court even though the taxpayers therein did not recite physical mismeasurement of capital gains or losses as is complained in the immediate cause.

VALIDITY OF UNITED STATES STATUTES

This appeal does not dispute the constitutionality of Title 26, Section 1012 (Appendix B-1) as requiring deferred accountability of capital expenditures to the time of sale of the related assets.

The appeal is taken as to the constitutionality of the judicial construction holding that the section is the basis for measuring the gain or loss realized from the sale of property.

QUESTIONS PRESENTED

(1) Whether the district court's refusal to hear either of two complaints denies the right to hearing pursuant to the due process clause of the 5th Amendment and of Rule 56, FRCP (Appendix B-3)?

(2) Whether a summary judgment lies to the favor of a defendant whose answer denied all facts other than money damages ... and which defendant declared on oath that the underlying issue of fact was contested ?

(3) Whether the courts below may dispose of an equitable issue of fact with a conclusion of law ?

(4) Whether the courts below may refuse to address pleadings that the Code Section upon which the conclusions at law rest has been applied in violation of the 16th Amendment ?

(5) Whether the opinion of the appellate court may refuse to address points noting that the district court judgment and opinion are self-contradictory and not in accord with the record ?

(6) Whether the courts below may refuse to deny or grant a motion for class action designation ?

STATEMENT OF THE CASE

On July 27, 1971, the plaintiff filed a complaint in the United States District Court for the Northern District of Texas. The complaint alleged a basic error in the method used by the Internal Revenue Service to determine income tax liability of the taxpayer, whose returns had reported capital gain for 1969 and capital loss for 1970. The circumstances in both tax periods were alleged to have produced an excessive tax. The complaint pleaded for refund of $51.49 for 1969 and for $97.60 for 1970.

The defendant did not file an answer to the first complaint even after having been granted a time extension for that purpose. Instead, the defendant filed a motion to dismiss which reduced to asserting failure to state a claim on which relief could be granted. Such motion compelled admission to all facts alleged in the complaint and its treatment as a motion for summary judgment.

Thereafter, the defendant did not oppose nor contest the plaintiff's motion for summary judgment.

At the pretrial conference, the district judge declared that he would hear both motions ... yet proceeded to hear only the defense motion to dismiss. Thereon, the defendant adopted the plaintiff's pleadings and signed a priorly negotiated pretrial order which stated that there were no disputed facts.

The district judge signed the pretrial order and set a trial date. However, without a hearing, he later rescinded the trial setting and entered his order of dismissal for failure to state a claim.

On appeal to the United States Court of Appeals for the Fifth Circuit, the plaintiff moved the court to set aside the defense impediment of failure to dispute the facts and to set a trial jurisdiction on the constitutional issue of a tax laid on capital. The defendant did not respond to that motion.

In a nonresponsive point in appellee's brief, the government counsel stated that the fact issue was an issue requiring trial.

On appellate court denial of motion and affirmance of order, the plaintiff returned his claim for refund to the Internal Revenue Service to satisfy the requirement for stating a claim to the court. Without findings of fact, the agency continued its disallowance of claims for refund in defiance of the government admissions that the accounting and computation of tax liability were in error.

Thereafter, the plaintiff filed his second cause in the district court : LESLIE H. BAKER, JR. v. UNITED STATES OF AMERICA (Appendix A-5). The complaint alleged the same accounting and computational mistakes, the same money injury, the same constitutional pleading that the method produced a tax on capital, ... and adding the

allegation that the Internal Revenue Service had altered its capital tax schedule for individual taxpayers in clear revelation of its awareness that former schedules conveyed the mistakes alleged.

The defendant answered that second complaint by denying the allegations which were priorly admitted (except as to money damages). The answer made no affirmative defenses in support of those denials.

In an untimely answer to interrogatories allowed by the district court, the defendant declared under oath that the underlying issue of fact was contested.

Thereafter, the defendant refused to respond to plaintiff motions for summary judgment supported by affidavits and exhibits, blocked the plaintiff's access to the identity of expert witnesses from the Internal Revenue Service, prevented the plaintiff from obtaining public records prospective to trial impeachment application, and refused to take part in any discussion leading to simplification of the issues and composition of a pretrial order.

The defendant did, however, file his own motion for summary judgment, which motion was devoid of the necessary assertion that there were not any material facts in dispute.

In a pretrial conference held without a reporter, ... and in which the merits of the complaint were not addressed ... the district judge allowed the defendant to prepare a pretrial order differing from that already filed by the plaintiff. The defense version ignored all of the facts alleged and proved by the plaintiff. Thereafter, the judge removed himself from hearing the cause.

Throughout the period prior to entry of summary

judgment, the district court ignored all of the docket entries filed by the plaintiff as well as the letters requesting setting of hearing or trial.

On November 19, 1974, the district court filed its memorandum-opinion and order (Appendix A-4). The opinion declared that there were no material facts in dispute, yet including findings that were not consistent with the facts of record. The opinion did not address any of the pleadings nor embrace facts illustrating the mathematical error in the method of computing the tax. The conclusions of law held that the basis for gain or loss from the sale of property was to be determined from the cost basis.

On December 10, 1974, the district court entered summary judgment favoring the government.

On June 13, 1975, after ignoring an appellant motion to advance hearing of oral argument and bring up the entirety of the record, the United States Court of Appeals for the Fifth Circuit filed its opinion affirming the judgment of the district court. It declined to review the appellant's point that the fact issue is grounded in equity and that government admissions confirmed that the tax is a tax on capital. Its conclusion of law recites an impossible property measurement which prohibits a correct computation of gain or loss.

Summarized briefly, the facts of record show that the property sold for a gross sale price has been mismeasured by the single-numbered cost, and that a direct tax has been levied on the expenses paid by a seller. The expenses cannot possibly add to components of income ... yet the numbers do contribute to seller "income" in the mistaken tax computation demanded by the Treasury Department. Correctly measured gain or loss is consistent with Title 26, Section 1011 (Appendix B-2).

The plaintiff has urged that the conclusions of law have been used to set aside a correct judgment in equity, and that those conclusions are inconsonant with the intent of Congress as well as being devoid of constitutional basis.

It is from the aforementioned judgment of the district court and affirmance by the appellate court that this appeal is taken.

REASONS FOR PLENARY CONSIDERATION OF QUESTIONS

(A) Questions relating to due process

Throughout all processes in the district and the appellate courts, the appellant has been denied due process notice, hearing, and the defense response due him in any adversary proceeding. The appellant has repeatedly alerted the defendant and the courts that the mistaken tax assessment has diminished capital resources of the United States in a sum not less than 100 billions of dollars. The appellant has shown that the error disturbs all capital market-places continually.

Refusal of hearing and transcript has substantially compromised the plaintiff's ability to make his best case.

The appellant finds no comparable case report to show that the judiciary has denied a due process hearing in so many ways ... and on an issue so important.

(B) Questions relating to conclusions of law

The appellant urges that it is important to United States jurisprudence that an issue which affects the economic survival of the United States find the courts willing to hear ... and to exhaust all avenues of inquiry without any suggestion of haste or

prejudgment. Briefs of the respondent and the opinions of the courts have repeatedly cited case reports of taxpayers who had not disposed of the assets whose related expenses they had deducted. In such circumstances, those taxpayers had no component of income to report ... hence, no way to have confused the tax liability by placing any expense notation into the return in a column for reporting income.

The opinions have uniformly keyed to citations of Supreme Court opinion, HELVERING v. WINMILL, 305 US 79. Yet that opinion reveals that the taxpayer was reporting business transactions, that he had made no claims regarding purchases or sales from capital account, and that there is no possible connection between the tax position of Winmill and that of the appellant.

Since that precedent has been misapplied, and there are no other equivalent Supreme Court decisions, the appellant urges that this Court should accept argument and briefs on the merits, giving specific attention to the repeated evasion of facts by the appellee. The immediate cause is particularly useful since it is illustrative of the mismeasurement deriving from gains and losses.

CONCLUSION

For the foregoing reasons, it is prayed that the judgments of the courts below be reversed, that this Court enter initiative opinion on the facts in equity, that the appellant be awarded refunds and costs as pleaded, and that the cause be designated a class action.

Respectfully submitted, Leslie H. Baker, Jr.

Leslie H. Baker, Jr.
1417 Lincoln Avenue
Fort Worth, Texas 76106

Appendix A-1

Leslie H. Baker, Jr. v. United States of America, No. C4-2222, United States District Court for the Northern District of Texas.

JUDGMENT

Defendant having filed a motion for summary judgment on the grounds that there was no issue of material fact herein and that defendant was entitled to judgment as a matter of law, and plaintiff having filed a motion for summary judgment on the same grounds, and the Court having considered both motions and having entered its opinion on November 19, 1974, it is

ORDERED, JUDGED, and DECREED that defendant's motion for summary judgment be and the same is hereby granted and plaintiff's motion for summary judgment be and the same is hereby denied, and it is further

ORDERED, ADJUDGED, and DECREED that judgment is hereby entered in favor of the defendant with respect to its motion for summary judgment dismissing the plaintiff's complaint with prejudice and awarding the defendant its costs, and it is further

ORDERED, ADJUDGED, and DECREED that judgment be entered in favor of the plaintiff against the defendant for the years 1969 and 1970, and the plaintiff recover from the defendant tax in the amount of $442.39, plus assessed interest in the amount of $33.93, plus statutory interest on the ground that the defendant has conceded that plaintiff is entitled to charitable contributions claimed in this action.

ENTERED this 9th day of December 1974.

/S/ Robert M. Hill,
United States District Judge

: :

Appendix A-2

Leslie H. Baker, Jr., v. United States of America, No. 75-1274, United States Court of Appeals for the Fifth Circuit.

OPINION

Appeal from the United States District Court for the Northern District of Texas.

Before BROWN, Chief Judge, and GODBOLD and GEE, Circuit Judges.

PER CURIAM:

(1, 2) In this second go around[1] Taxpayer asserts that brokerage and related expenditures in the purchase of securities are not to be added to the price paid to the seller but should be deducted as an expense. Similarly, he argues that such costs of sale are not to be deducted from the sales proceeds from the buyer. Despite the earnestness of his contentions they come too late. For the law has held to the contrary. Woodward v. Commissioner, 1970, 397 U.S. 572, 574-75, 90 S. Ct. 1302, 1304, 25 L. Ed. 2d 577, 581; Spreckels v. Commissioner (Helvering), 1942, 315 U.S. 626, 62 S. Ct. 777, 86 L. Ed. 1073; Commissioner (Helvering) v. Winmill, 1938, 305 U.S. 79, 59 S. Ct. 45, 83 L. Ed. 52; Meade v. Commissioner, 5 Cir., 1974, 489 F. 2d, 161; Helis v. Usry, 5 Cir., 1972, 464 F. 2d. 330.

Affirmed.

1. Baker v. District Director, 5 Cir., 1972, 468 F. 2d. 199.

: :

Appendix A-3

Leslie H. Baker, Jr. v. United States of America, No. 75-1274, United States Court of Appeals for the Fifth Circuit

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Leslie H. Baker, Jr, appellant pro se above named, appeals to the Supreme Court of the United States from the judgment entered in this action on June 13, 1975 affirming the summary judgment from the United States District Court for the Northern District of Texas dated December 10, 1974.

This appeal is taken as of right pursuant to equity powers of the Supreme Court conveyed by Article III, Sections 1 and 2, of the United States Constitution.

Respectfully entered this 23rd day of June, 1975.

/s/ Leslie H. Baker, Jr.
1417 Lincoln Avenue
Fort Worth, Texas 76106

Certificate of Service

This will certify that one copy of the above notice was sent by certified airmail to the Solicitor-General, United States Department of Justice, Washington, D. C., 20530; one copy to Mr. Scott P. Crampton by certified airmail (same address); and one copy by regular mail to Mr. William L. Johnson, Jr., Assistant United States Attorney, Room 310, U. S. Court House, Fort

Worth, Texas, 76102, all on the 23rd day of June, 1975; on the same date, a copy was sent to Clerk, United States Supreme Court by regular mail.

/s/ Leslie H. Baker, Jr.

: :

Appendix A-4

Leslie H. Baker, Jr. v. United States of America, No. C4-2222, United States District Court for the Northern District of Texas

MEMORANDUM-OPINION AND ORDER

This is a suit for a tax refund of income taxes for the calendar years 1969 and 1970 in the total amount of $624.33, plus statutory interest. Both the taxpayer and the government have filed motions for summary judgment. This court has considered the motions, affidavits, and briefs of the parties and is of the opinion that the taxpayer's motions should be overruled and that the government's motion should be granted.

The material facts of this case are undisputed. During the years 1969 and 1970 the taxpayer traded securities through an account with a brokerage firm. Taxpayer was not a dealer of securities. For the year 1969 taxpayer entered the sum of $536.42, incurred as brokerage fees and commissions on security transactions, as a loss on Schedule E (Supplemental and Miscellaneous Income) of his tax return. This treatment resulted in a reduction of his taxable income for 1969 by the sum of $536.42. Taxpayer similarly treated the sum of $557.16 on

Schedule A (Itemized Deductions) of his 1970 tax return.

The Commissioner assessed additional taxes against the taxpayer for the tax years 1969 and 1970. Taxpayer paid the taxes, filed claims for refund, which were subsequently disallowed, and timely brought this action.

The government contends that the brokerage fees and commissions are not deductable and must be included in the cost basis of the securities. Taxpayer contends that the government's accounting method and tax computation on the gain or loss from the sale or exchange of a capital asset is erroneous.

Taxpayer's theory is basically that costs of purchase, ownership and sale of capital assets, ie. brokerage fees and commissions paid on the exchange of securities, should not under proper accounting methods be included in the computation of the capital gains tax. These costs, taxpayer argues, should be treated as itemized expenditures and deducted from gross income and therefore fully excluded from the capital gains tax liability.

It is well established that brokerage fees and commissions paid on the purchase of securities are a part of the costs of securities, and that commissions paid on sales of securities are deducted from the sale price. E.g., Woodward v. C.I.R., 397 U.S. 572, 575(1970); Spreckels v. C.I.R., 315 U.S. 626, 630 (1942); Commissioner v. Winmill, 305 U.S. 79, 84 (1938); Commissioner v. Union Pacific Ry. 293 U.S. 282, 286 (1934); Meade v. C.I.R., 489 F. 2d. 161, 164 (5th Cir. 1974); Helis v. Usry, 464 F. 2d. 330 (5th Cir. 1972); Commissioner v. Covington, 120 F. 2d 768, 770 (5th Cir. 1941). In Woodward, the United States Supreme

Court stated :

> It has long been recognized as a general matter, that costs incurred in the acquisition or disposition of a capital asset are to be treated as capital expenditures. The most familiar example of such treatment is the capitalization of brokerage fees for the sale or purchase of securities ...
>
> The law could hardly be otherwise, for such ancillary expenses incurred in acquiring or disposing of an asset are as much part of the costs of that asset as is the price paid for it. 397 U.S. at 575 and 576.

Taxpayer in his brief attempts to distinguish the above cited cases on the grounds that none of them involved a "fundamental mathematical and accounting error in the tax return schedules ... " as taxpayer urges here.

The Internal Revenue Code of 1954 provides that the "basis" of property shall be the costs of such property ... " Int. Rev. Code of 1954, § 1012. The Internal Revenue Code of 1954 further provides that the "adjusted basis" for determining the tax on the sale of property shall be the "basis" adjusted by the "expenditures properly chargeable to the capital account. " Int. Rev. Code of 1954, § § 1011 and 1016.

Taxpayer theorizes that the basis of property, which is costs, includes amounts spent for brokerage fees and commissions, and in arriving at "adjusted basis" such commissions and fees must be subtracted from costs of property as "expenditures". Taxpayer postulates that "basis" or "costs" as used in the Internal Revenue Code of 1954, is composed of two sums - - the amount actually spent

for the property plus the brokerage fees and commissions. Plaintiff further postulates that arriving at "adjusted cost" requires that "expenditures" be deducted from "costs". From these postulates taxpayer theorizes that "expenditures", as used in § 1016, include brokerage fees and commissions.

Taxpayers' postulates are properly drawn from the above cited sections of the Internal Revenue Code. However, taxpayer's theory is based on fundamental legal error in assuming that commissions and brokerage fees on the purchases of securities are included in "expenditures" within the meaning of Internal Revenue Code § 1016.

Taxpayer conclusions are not logical and do not find support in the law. Since brokerage fees and commissions are a component part of "cost" for purposes of § 1012 of the Internal Revenue Code, they are not at the same time to be considered "expenditures" for purposes of § 1016 of the Internal Revenue Code.

It is therefore ORDERED that taxpayer's motion for summary judgment be denied and that government's motion for summary judgment be sustained. The attorney for the government shall prepare a final judgment in accordance with the foregoing.

Dated this 18th day of November, 1974.

/s/ Robert M. Hill,
United States District Judge

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Appendix A-5

Leslie H. Baker, Jr. v. United States of America, No. C4-2222, United States District Court for the Northern District of Texas.

COMPLAINT
(Paragraph 8 Only)

The defendant has consistently declined to discuss the alleged errors in his accounting method and tax computation which impose a tax upon commissions paid in connection with net long term gain securities transactions ... and which deny otherwise allowable net loss exclusions of capital which includes commissions not properly expensed in the defendant's method of accounting.

The defendant has advised the plaintiff in writing to disregard the instructions of its Form 1040, Schedule D and has subsequently revised that schedule in clear revelation of the errors ... which errors remain, even in the revised version.

The plaintiff alleges that the accounting method employed is in violation of 26 U. S. C. Sections 1001, 1011, 1012, and 1016 ... or, if not, that portions of those sections violate the Sixteenth Amendment to the United States Constitution to the extent that an income tax is imposed upon capital.

/s/ Leslie H. Baker, Jr.
Plaintiff Pro Se

::::::::::::::::::::::::::::::::::::

Appendix B-1

Title 26, Section 1012, United States Code

Basis of property - cost

The basis of property shall be the cost of such property, except as otherwise provided in this subchapter and in subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains

and losses). The cost of real property shall not include any amount in respect of real property taxes which are treated under section 164(d) as imposed on the taxpayer.

: :

Appendix B-2

Title 26, Section 1011, United States Code

Adjusted basis for determining gain or loss

The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under section 1012 or other applicable sections of this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses), adjusted as provided in section 1016.

: :

Appendix B-3

Rule 56, Federal Rules of Civil Procedure

* * *

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled

to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

* * *

CERTIFICATE OF SERVICE

This is to certify that, in accordance with Supreme Court Rule 33, three copies of this appeal have been sent by certified airmail to the Solicitor General, Department of Justice, Washington, D. C. 20530; and one copy has been sent by certified airmail to the Assistant United States Attorney General (Tax Division), Department of Justice, Washington, D. C. 20530, both services having been made on the 15th day of August, 1975.

Leslie H. Baker, Jr.

Leslie H. Baker, Jr.

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

No. 75-257

In the Supreme Court of the United States

OCTOBER TERM, 1975

LESLIE H. BAKER, JR., APPELLANT

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION TO DISMISS AND MEMORANDUM IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-257

LESLIE H. BAKER, JR., APPELLANT

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION TO DISMISS AND MEMORANDUM IN OPPOSITION

Pursuant to Rule 16(1)(a) of the Rules of this Court, appellee moves to dismiss this appeal. Treating the appeal as a petition for a writ of certiorari pursuant to 28 U.S.C. 2103, the petition should be denied.

1. The sole question presented is whether brokerage and related expenditures incurred by appellant in the purchase and sale of securities as a non-dealer are deductible for federal income tax purposes.

The decision below held that such costs are capital expenditures within the meaning of Section 263 of the Internal Revenue Code of 1954, to be added to the basis of the securities purchased and deducted from the amounts realized upon their sale.

During the years 1969 and 1970, appellant, who was not a dealer in securities, engaged in transactions in securities through an account with a brokerage firm. On his federal income tax returns for those years, appellant deducted brokerage fees and commissions on his securities transactions (J.S. App. 13-14). On audit, the Commissioner of Internal Revenue disallowed the claimed deductions. In this refund suit, the district court dismissed appellant's suit (J.S. App. 10-11), and the court of appeals affirmed *per curiam* (J.S. App. 11).

This case does not come within any statutory provision allowing an appeal of a decision of a court of appeals to this Court. See 28 U.S.C. 1252 and 1254(2). The appeal should therefore be dismissed.

2. Treating the appeal as a petition for a writ of certiorari pursuant to 28 U.S.C. 2103, there is no basis for further review. It is well settled by the decisions of this Court that brokerage fees and commissions paid by a non-dealer in securities upon the purchase of securities are to be added to the basis upon purchase, and any such costs paid upon the sale of securities are to be offset against the amount realized upon their sale. See *Woodward* v. *Commissioner*, 397 U.S. 572, 574-575; *Helvering* v. *Winmill*, 305 U.S. 79; *Spreckels* v. *Commissioner*, 315 U.S. 626.

It is respectfully submitted that the appeal should be dismissed. Treating the appeal as a petition for a writ of certiorari, the petition should be denied.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1975.

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